

Pushpam Subramaniam v Majlis Peguam Malaysia & Anor

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HIGH COURT (KUALA LUMPUR) — CIVIL APPEAL NO R1-17B-27 OF 2005

RAUS SHARIF, ABDULL HAMID EMBONG AND ZAINUN ALI JJ
12 APRIL 2006

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Legal Profession — Professional discipline — Procedure — Proceedings before Disciplinary Board — Adjournment to hearing of complaint refused by board causing appellant to be suspended in her absence — Whether appellant denied right to be heard — Legal Profession Act 1976 s 94(4)

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Legal Profession — Professional discipline — Suspension from practice — Allegation of misuse of clients' money — Whether conduct of appellant amounted to dishonesty justifying suspension — Legal Profession Act 1976 s 94(4)

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The appellant was an advocate and solicitor. Pursuant to a complaint to the Bar Council by her clients that the appellant had misused their monies deposited with the appellant in the client's account, the Bar Council had by a letter dated 27 September 2004 sought an explanation from the appellant. There was no response from the appellant, although there was a confirmation of receipt of a letter by the appellant on 30 September 2004. On 12 October 2004, the Bar Council sent a final reminder. The appellant, by a letter dated 18 November 2004 had sought an extension of 14 days to provide her response to the complaint. By a letter dated 18 November 2004, the Bar Council granted the appellant's request for the extension of time. However, no explanation came from the appellant. On 23 February 2005, the Bar Council referred the matter to the Disciplinary Board for an order under s 94(4) of the Legal Profession Act 1976 ('the Act'). By a letter dated 26 May 2005, the appellant wrote to the Disciplinary Board seeking an adjournment of the hearing. However on 24 June 2005, a day before the hearing date, the Disciplinary Board received a letter from the appellant which requested for another adjournment. The request for an adjournment however was objected by the Bar Council. Hence, the Disciplinary Board proceeded with the hearing in the absence of the appellant. After hearing submission from the Bar Council and perusing the record of complaint, the Disciplinary Board suspended the appellant from practice pending reference to the Disciplinary Committee as required by the Act. The appellant appealed against the order. The principal issue raised by the appellant was that she was not afforded an opportunity to be heard as the suspension order was made in her absence. Another main issue raised by the appellant was that the complaint against her did not fall within the provisions of s 94(4)(c) of the Act. According to the appellant, the prerequisite of s 94(4) of the Act had not been fulfilled to justify the Bar Council to invoke the provisions of the section as there is no dishonest act on the part of the appellant.

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A **Held**, dismissing the appeal:

(1) The appellant had herself to be blamed for the order being granted in her absence. Her indifferent and lackadaisical conduct was clear from the start. On 27 July 2004, when the Bar Council sought an explanation on the complaint against her, she failed to respond. She only gave her explanations to the Bar Council on 19 July 2005 and 9 August 2005, long after the Disciplinary Board had granted the order (see para 9).

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(2) The Disciplinary Board's decision to refuse to an adjournment was a proper exercise of its discretion. The appellant's conduct in requesting for the adjournment at the very last minute and absenting herself at the hearing date, which was fixed at her request, and without confirming whether her last minute request for an adjournment was granted, was irresponsible, a conduct unbecoming of an advocate and solicitor. Thus, there was no reason to interfere with the Disciplinary Board exercise of its discretion (see para 11).

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(3) The application by the Bar Council to the Disciplinary Board under s 94(4)(c) of the Act is akin to an interlocutory application, pending a full and thorough investigation into the complaint by the Disciplinary Committee. The Bar Council was justified in making the application as the complaint against the appellant was an allegation that the appellant had misused her client's money. Misusing client's money without doubt is a dishonest act (see para 13).

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[Bahasa Malaysia summary]

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Perayu adalah seorang peguambela dan peguamcara. Menurut satu aduan kepada Majlis Peguam oleh anakguamnya bahawa perayu telah menyalahgunakan wang mereka yang didahulukan kepada perayu dalam akaun anakguam, Majlis Peguam telah melalui sepucuk surat bertarikh 27 September 2004 meminta satu penjelasan daripada perayu. Tiada jawapan diperoleh daripada perayu meskipun terdapat pengesahan penerimaan surat itu oleh perayu pada 30 September 2004.

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Pada 12 Oktober 2004, Majlis Peguam telah menghantar peringatan terakhir. Perayu, melalui sepucuk surat bertarikh 18 November 2004 memohon lanjutan 14 hari untuk membolehkannya memberi jawapan kepada aduan itu. Melalui sepucuk surat bertarikh 18 November 2004, Majlis Peguam telah membenarkan permintaan perayu untuk lanjutan masa. Namun, tiada penjelasan diperoleh daripada perayu. Pada 20 Februari 2005, Majlis Peguam telah merujuk perkara tersebut kepada Lembaga Tatatertib untuk satu perintah di bawah s 94(4)

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Akta Profesyen Undang-Undang 1976 (Akta tersebut'). Melalui sepucuk surat bertarikh 26 Mei 2005, perayu telah menulis kepada Lembaga Tatatertib memohon satu penangguhan perbicaraan. Namun pada 24 Jun 2005, sehari sebelum tarikh perbicaraan, Lembaga Tatatertib menerima surat daripada perayu memohon satu lagi penangguhan. Permintaan untuk penangguhan itu ditolak oleh Majlis Peguam.

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Oleh itu, Lembaga Tatatertib meneruskan perbicaraan dengan ketiadaan perayu. Selepas mendengar hujah daripada Majlis Peguam dan meneliti rekod aduan, Lembaga Tatatertib telah menggantung perayu daripada amalan sementara menunggu rujukan kepada Jawatankuasa Tatatertib seperti yang diperuntukkan oleh Akta tersebut. Perayu telah merayu terhadap perintah tersebut. Persoalan utama yang ditimbulkan oleh perayu adalah bahawa beliau tidak diberikan peluang untuk

didengar kerana perintah penggantungan itu dibuat tanpa kehadirannya. Satu lagi persoalan yang ditimbulkan oleh perayu adalah bahawa aduan terhadapnya tidak terangkum di bawah peruntukan s 94(4) Akta tersebut. Menurut perayu, pra syarat s 94(4) Akta tersebut tidak dipatuhi untuk menjustifikasikan Majlis Peguam menggunakan peruntukan seksyen tersebut kerana tiada tindakan tidak jujur di pihak perayu.

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Diputuskan, menolak rayuan tersebut:

- (1) Perayu perlu menyalahkan diri sendiri kerana perintah itu telah dibenarkan tanpa kehadirannya. Kelakuan tidak ambil peduli dan acuh tak acuh adalah jelas. Pada 27 Julai 2004, apabila Majlis Peguam meminta satu penjelasan berhubung aduan terhadapnya, beliau gagal untuk menjawab. Beliau hanya memberikan penjelasannya kepada Majlis Peguam pada 19 Julai 2005 dan 9 Ogos 2005, setelah sekian lama Lembaga Tatatertib memberikan perintah tersebut (lihat perenggan 9).
- (2) Keputusan Lembaga Tatatertib untuk menolak satu penangguhan merupakan penggunaan budi bicaranya dengan betul. Perlakuan perayu memohon satu penangguhan di saat akhir dan tidak hadir sendiri pada tarikh perbicaraan, yang telahpun ditetapkan atas permintaannya dan tanpa mengesahkan sama ada permintaan saat akhirnya untuk satu penangguhan dibenarkan, adalah tidak bertanggungjawab, suatu kelakuan yang tidak wajar ditunjukkan oleh seorang peguambela dan peguamcara. Oleh itu, tiada alasan untuk campur tangan dengan Lembaga Tatatertib menggunakan budi bicaranya (lihat perenggan 11).
- (3) Permohonan oleh Majlis Peguam kepada Lembaga Tatatertib di bawah s 94(4) Akta tersebut adalah sama dengan satu permohonan interlokutori, sementara menunggu siasatan penuh dan lengkap terhadap aduan oleh Jawatankuasa Tatatertib. Majlis Peguam dijustifikasikan dalam membuat permohonan tersebut kerana aduan terhadap perayu merupakan satu pengataaan bahawa perayu telah menyalahgunakan wang anakguamnya. Menyalahgunakan wang anakguam tanpa diragui adalah satu perbuatan yang tidak jujur (lihat perenggan 13).]

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Notes

For cases on procedure, professional discipline, see 9 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 1868–1902.

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For cases on suspension from practice, see 9 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 1920–1922.

Legislation referred to

Legal Profession Act 1976 s 94(4)

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R Jegatheesa (RJ Esa & Co) for the appellant.

Robert Lazar (Sheila Lingam with him) (Shearn Delamore & Co) for the first respondent.

S Siva (Cheah Teh & Su) for the second respondent.

A Raus Sharif J:

B [1] This is an appeal by the appellant, an advocate and solicitor, against the order of the Advocates and Solicitors Disciplinary Board ('the Disciplinary Board') which suspended the appellant pursuant to s 94(4) of the Legal Profession Act 1976 ('the Act') which reads as follows:

C Where an Advocate and Solicitor is subject of a complaint concerning any dishonest act committed by him in his capacity as an Advocate and Solicitor that it would be in the public interest or interest of his clients or of the profession that such Advocate and Solicitor be suspended from practice, the Bar Council may apply to the Disciplinary Board for an order suspending such Advocate from practice until further notice.

D [2] The brief facts leading to the suspension of the appellant are these. By a letter dated 7 September 2004, one Gengaraju s/o Narayanan and Saraswathy d/o Kottiah ('the complainants') forwarded a complaint against the appellant to the Bar Council. Essentially, the complaint by the complainants was that the appellant had misused their monies deposited with the appellant in the client's account.

E [3] By a letter dated 27 September 2004, the Bar Council then sought an explanation from the appellant. There was no response from the appellant, although there was a confirmation of receipt of a letter by the appellant on 30 September 2004. On 12 October 2004, the Bar Council sent a final reminder. The appellant, by a letter dated 18 November 2004 had sought an extension of 14 days to provide her response to the complaint. By a letter dated 18 November 2004, the Bar Council granted the appellant's request for the extension of time. However, no explanation came from the appellant.

G [4] On 23 February 2005, the Bar Council referred the matter to the Disciplinary Board for an order under s 94(4) of the Act. The Disciplinary Board on 11 May 2005 had sent a notice for the appellant to appear before them on 28 May 2004 to show cause why an order of suspension ought not be made against her. She was also advised that she could be represented by counsel.

H [5] By a letter dated 26 May 2005, the appellant wrote to the Disciplinary Board seeking an adjournment of the hearing on the basis that she had an urgent personal matter to attend to and suggested the hearing date be fixed on Saturday 25 June 2005. The Disciplinary Board granted her request for an adjournment and fixed the hearing date on 25 June 2005.

I [6] However, on 24 June 2005, a day before the hearing date, the Disciplinary Board received a letter from the appellant dated 23 June 2005 which requested for an adjournment on the ground that she had a criminal hearing before Kuala Lumpur Sessions Court beginning from 27 June 2005. The request for an adjournment however was objected by the Bar Council. Hence, the Disciplinary Board proceeded with the hearing in the absence of the appellant. After hearing submission from the Bar Council and perusing the record of complaint, the Disciplinary Board granted

the order, suspending the appellant from practice pending reference to the Disciplinary Committee as required by the Act.

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[7] The Bar Council thereafter published the order in the press in accordance with their standard practice.

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[8] Before us, the principal issue raised by the appellant was that she was not afforded an opportunity to be heard as the suspension order was made in her absence. According to her, she was condemned unheard.

[9] We were surprised that this ground of 'no opportunity to be heard' was raised by the appellant. To us, the appellant has herself to be blamed for the order being granted in her absence. Her indifferent and lackadaisical conduct was clear from the start. On 27 July 2004, when the Bar Council sought an explanation on the complaint against her, she failed to respond. She only gave her explanations to the Bar Council on 19 July 2005 and 9 August 2005, long after the Disciplinary Board had granted the order.

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[10] The appellant's indifference was further displayed before the Disciplinary Board. When her matter was fixed for hearing before the Disciplinary Board on 28 May 2005 she requested for an adjournment. She requested the adjournment two days before the hearing date. Her request was granted by the Disciplinary Board and fixed the hearing to 25 June 2005, a date which was requested by her. However, two days before the hearing date she again asked for an adjournment.

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[11] On the above facts, we are of the view that the Disciplinary Board's decision to refuse to an adjournment was a proper exercise of its discretion. To us, appellant's conduct in requesting for the adjournment at the very last minute and absencing herself at the hearing date, which was fixed at her request, and without confirming whether her last minute request for an adjournment was granted, was irresponsible, a conduct unbecoming of an advocate and solicitor. Thus, we have no reason to interfere with the Disciplinary Board exercise of its discretion.

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[12] Another main issue raised by the appellant was that the complaint against her does not fall within the provisions of s 94(4)(c) of the Act. According to the appellant, the prerequisite of s 94(4) of the Act had not been fulfilled to justify the Bar Council to invoke the provisions of the section as there is no dishonest act on the part of the appellant.

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[13] With respect, we are unable to agree. We are of the view that the application by the Bar Council to the Disciplinary Board under s 94(4)(c) of the Act is akin to an interlocutory application, pending a full and thorough investigation into the complaint by the Disciplinary Committee. To us, the Bar Council was justified in making the application as the complaint against the appellant was an allegation that the appellant had misused her client's money. Misusing client's money without doubt is a dishonest act.

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A [14] We are aware that the appellant's interest will be gravely affected by the order of suspension. But the interest of the profession and above all public interest far outweighs the interest of the appellant. Thus, we are unanimous in dismissing the appellant's appeal. But to ensure that the suspension is not longer than is necessary, we also make an order that the appellant's case is to be heard by the Disciplinary Committee within two months from the date of the order.

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[15] Accordingly, the appellant's appeal was dismissed with costs.

Appeal dismissed.

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Reported by Loo Lai Mee

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